SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. [redacted]91

E. I. DU PONT DE NEMOURS AND COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

STATEMENT AS TO JURISDICTION

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STATUTES CITED

DISTRICT COURT OF THE UNITED STATE,
FOR THE SOUHTERN DISTRICT OF NEW YORK

Civil No. 26-258

UNITED STATES OF AMERICA,

Plaintiff,

against

NATIONAL LEAD COMPANY, TITAN COMPANY, INC., E. I. DU PONT DE NEMOURS AND COMPANY, INC.,

Defendants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, defendant E. I. du Pont de Nemours and Company (hereinafter referred to as du Pont) submits this statement showing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the Final Decree in the above entitled cause.

Statutory Provisions Sustaining the Jurisdiction

This is an appeal from a decree of the District Court of the United States for the Southern District of New York in a suit in which the United States, as plaintiff pursuant to Section 4 of the Sherman Act, sought and obtained an injunction against du Pont and others in respect of acts found to constitute a violation of Section 1 of said Act

(Act of July 2, 1890, c. 647, Secs. 1 and 4, 26 Stat. 209; 15 U. S. C. Secs. 1 and 4).

The appeal lies directly to the Supreme Court of the United States under Section 238 (1) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 938; 28 U. S. C. Sec. 345), and under Section 2 of the Expediting Act of February 11, 1903 (c. 544, Sec. 2, 32 Stat. 823, 36 Stat. 1163, 58 Stat. 272; 15 U. S. C. Sec. 29).

Date of Decree and Application for Appeal

The decree sought to be reviewed was entered October 11, 1945.

The petition for appeal is being presented on December 10, 1945.

Nature of the Case and Rulings Below

On June 24, 1944, the United States filed a complaint against du Pont, the National Lead Company and Titan Company, Inc. alleging that each of such defendants had violated Sections 1 and 2 of the Sherman Act by agreeing, combining and conspiring to restrain and to monopolize the foreign and domestic trade and commerce in titanium pigments. The complaint prayed, among other things, (a) that the defendants' alleged practices be held in violation of Sections 1 and 2 of the Sherman Act, (b) that the defendants be enjoined from continuing such practices, (c) that the defendants be enjoined from threatening or bringing any infringement suits upon any of their United States patents relating to titanium pigments, (d) that the defendants be compelled to grant upon the request of any third person royalty-free licenses under such patents, and (e) that the defendants be compelled to furnish such third person all technical information appropriate to the practice of such patents.

The case came to trial on December 4, 1944, and the trial ended on March 14, 1945. On July 5, 1945, the District Court filed an opinion and on October 2, 1945, the District Court entered its Findings of Fact and Conclusions of Law. Copies of said opinion (which has not yet been reported) and of said Findings of Fact and Conclusions of Law are appended hereto.*

The District Court found that titanium is an abundant element, that titanium compounds are suitable for the manufacture of titanium pigments and that such pigments are desirable in connection with the manufacture of paints, rubber, glass, paper, vitreous enamel and other products. The District Court also found that there was no titanium industry prior to 1920 and that such industry was created by an agreement in 1920 between defendant National Lead, which at that time held fundamental patents covering the manufacture of titanium pigments, and a Norwegian company which held patents of a like character. Under the 1920 agreement the parties cross-licensed their patents, present and future, agreed never to question the validity of the patents of the other, and agreed to exchange technical information respecting such patents. In addition, however, the District Court found that the parties to the 1920 agreement divided the world into trade territories, agreed not to trespass into the territory allotted to the other and to compel sublicensees to abide by like restrictions. According to the District Court, the objects of the parties to such agreement were the elimination of competition and the advancement of the art through the exchange of technology. The District Court further found that the 1920 agreement succeeded in carrying out the intentions of the parties and was the basic agreement pursuant to which defendant Na-

* (Clerk's Note—The Opinion, Findings of Fact, Conclusions of Law and final decree are printed as Appendices to the Jurisdictional Statement in No. 1130 and are not reprinted here.)

tional Lead, through defendant Titan Company, Inc. (described by the District Court as National Lead's "corporate pocket for the deposit of its holdings in foreign titanium enterprises") developed the titanium industry in France, Germany, England, Japan and Canada on a co-partnership basis with local chemical concerns in those countries.

Turning to defendant du Pont, the District Court found that it entered into the titanium industry in 1931 at which time it acquired some titanium patents. It also found that du Pont and National Lead at all times thereafter were in active competition for customers, that they have likewise at all times endeavored to match each other's products and that while they have sold at identical prices, such price identity was not the product of agreement or collusion. It was likewise recognized by the District Court that upon du Pont's entry into the titanium industry patent controversies arose between National Lead and du Pont and that during such controversies National Lead endeavored to have du Pont subscribe to the principles of the 1920 agreement. The District Court further found that du Pont refused, unlike the numerous other companies having contractual relations with National Lead, to do so. Instead, du Pont and National Lead entered into a patent cross-licensing agreement in 1933 which the District Court found to have been prepared in the light of the then recent decision of the Supreme Court of the United States in *Standard Oil Company (Indiana), et al.* v. *United States*, 283 U. S. 163. But while the District Court found that du Pont did not agree with National Lead to refrain from exporting titanium pigments it also found that du Pont did, through the official in charge of its titanium enterprise, Mr. Rupprecht, assure National Lead that, as a practical matter, such exports would not take place. For this reason the District Court concluded that du Pont became a mem-

ber of the illegal combination—in the Court's words, "true, a special member, with a status, rights and obligations, different from that of the other members, but a member nonetheless."

On October 11, 1945, a Final Decree was entered which, among other things, with reference to du Pont (a) cancels its agreements with defendants National Lead Company and Titan Company, Inc., (b) enjoins it from entering into or adhering to any agreement relating to titanium pigments which has as its purpose or effect to divide sales or manufacturing territories, to allocate territories, to limit or prevent United States imports or exports, to grant to any third party any market as its exclusive territory or to keep any third party out of any market, (c) enjoins it from restricting any purchaser of titanium pigments in the use of such pigments, (d) compels it to grant to any applicant a non-exclusive license under any of its patents or patent applications (and under all those which it acquires during the five years following the date of the decree) relating to titanium pigments at a uniform, reasonable royalty, (e) compels it during three years from the date of the decree to impart, in writing, at a reasonable charge, to any such applicant, at the latter's option, a manual of the methods and processes which du Pont uses at the date of the license in its commercial practice under the licensed patents in connection with the production of titanium pigments, (f) enjoins it from bringing or threatening any action against any persons for the alleged infringement prior to the date of the decree of its titanium patents, and (g) compels it to permit the Attorney General of the United States or his proper representative to interview its employees and to have access to its books and records relating to any matters contained in the decree. A copy of said Final Decree is appended hereto.

Cases Sustaining the Jurisdiction of the Supreme Court of the United States

Among the decisions sustaining the jurisdiction of the Supreme Court are the following:

Standard Oil Company (Indiana) v. *United States*, 283 U. S. 163, 170-171;
Interstate Circuit, Inc. v. *United States*, 306 U. S. 208, 226, 227;
United States v. *Masonite Corporation*, 316 U. S. 265, 274-275;
Direct Sales Co. v. *United States*, 319 U. S. 703, 713;
Braverman v. *United States*, 317 U. S. 49, 53;
United States v. *Falcone*, 311 U. S. 205, 210;
Gebardi v. *United States*, 287 U. S. 112, 121;
Wong Tai v. *United States*, 273 U. S. 77, 81;
Frohwerk v. *United States*, 249 U. S. 204, 209;
Williamson v. *United States*, 207 U. S. 425, 447;
Bannon and Mulkey v. *United States*, 156 U. S. 464, 468;
Dealy v. *United States*, 152 U. S. 539, 547;
Pettibone v. *United States*, 148 U. S. 197, 202;
United States v. *Britton*, 108 U. S. 199, 204;
United States v. *Hirsch*, 100 U. S. 33, 34;
Hartford-Empire Co. v. *United States*, 323 U. S. 386, 406-410, 413, 414-415, 417, 418;
Associated Press v. *United States*,* 89 L. Ed. 1512, 1524;
The Standard Oil Co. v. *United States*, 221 U. S. 1, 77, 78;
United States v. *American Tobacco Co.*, 221 U. S. 106, 185, 187, 188;

* Not yet officially reported.

De Beers Consolidated Mines, Ltd. v. *United States*, 325 U. S. 212, 218-220;
Appalachian Coals v. *United States*, 288 U. S. 344, 377;
Swift & Co. v. *United States*, 196 U. S. 375, 396;
New Haven R. Co. v. *Interstate Commerce Commission*, 200 U. S. 361, 404;
E. W. Bliss Co. v. *United States*, 248 U. S. 37, 48;
National Labor Relations Board v. *Express Publishing Co.*, 312 U. S. 426, 436-437;
Warner & Co. v. *Lilly & Co.*, 265 U. S. 526, 532;
Federal Trade Commission v. *Beechnut Packing Co.*, 257 U. S. 441, 455;
United States v. *Bausch & Lomb Co.*, 321 U. S. 707, 724, 726;
Ethyl Gasoline Corp. v. *United States*, 309 U. S. 436, 461;
United States v. *Crescent Amusement Co.*, 323 U. S. 173, 185, 186, 189;
United States v. *Aluminum Co. of America*, 148 F. (2d) 416, 446.

The Questions Involved Are Substantial

Defendant du Pont contends that its appeal to the Supreme Court of the United States would involve questions of extraordinary substance. One of them concerns the law of conspiracy and the validity of the District Court's holding that du Pont became a member of the combination by directing National Lead's attention to the fact that it was not, as a practical matter, interested in exporting titanium pigments to Europe even though it simultaneously refused to agree to refrain from such exports.

Another involves the validity of that portion of the Final Decree which compels du Pont to impart technical information concerning its patents. So far as we know, no relief

of this character has ever been granted heretofore. An analogous provision was stricken by the Supreme Court of the United States on its review of the decree in *Hartford-Empire Co.* v. *United States*, 323 U. S. 386 at 413 and 418.

December 10, 1945.

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